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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 DAVID MEYER, et. al.

12 Plaintiff,

13 vs.

14 CAPITAL ALLIANCE GROUP, et. al.,

15 Defendants.

Case No.: 15-CV-2405-WVG

**PLAINTIFFS' SEPARATE
STATEMENT OF
UNDISPUTED FACTS, IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT
AGAINST DEFENDANTS
CAPITAL ALLIANCE GROUP,
CAPITAL ALLIANCE
PARTNERS, NARIN
CHARANVATTANAKIT, &
MARK MENDOZA**

Hon. William V. Gallo
Hearing Sept 18, 2017, 2:00 pm

17 **INTRODUCTION**

18 Pursuant to the Federal Rules of Civil Procedure Rule 56 and Local Rule
19 7.1.f.1, Plaintiffs Kenneth Moser, Arnie Katz and DCM Properties, Inc., hereby
20 submit this Separate Statement of Undisputed Facts in support of their Motion for
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Partial Summary Judgment. These facts establish that Plaintiffs are entitled to summary adjudication for their first, second, third and sixth causes of action and the statutory and willful damages for each cause.

SEPARATE STATEMENT OF UNDISPUTED FACT

Plaintiff contends there is no genuine issue as to the following material facts:

UNDISPUTED MATERIAL FACTS	SUPPORTING EVIDENCE
1. In this case Capital Alliance, though it's Chief Executive Officer ("CEO"), Narin Charanvattanakit hired a company called Absolute Fax to send facsimile advertisements on its behalf.	Declaration of Justin Prato, Exhibit A, Deposition of Narin Charanvattanakit taken on February 28, 2017 ("Charanvattanakit 2017 Depo"), p. 33, ln. 9 – 14; p. 34 ln. 1-6 p. 35 ln. 12-14)
2. Mr. Charanvattanakit agrees that he knew they would send faxes.	Charanvattanakit 2017 Depo, p. 44 ln. 19 – p. 45 ln. 5
3. Mr. Charanvattanakit admits that Absolute Fax sent these fax ads.	Charanvattanakit 2017 Depo, p. 33 ln. 6 – p. 35 ln. 11
4. Mr. Charanvattanakit does not recall the specifics of his conversation with Absolute Fax as to how many "leads" were to be generated by fax.	Charanvattanakit 2017 Depo, p. 40 ln. 4-40
5. Mr. Charanvattanakit admits that he only attempted to contact Absolute fax once, by phone, and when he did not reach anyone he did not try again and did nothing else to stop the faxes.	Charanvattanakit 2017 Depo, p. 36, ln. 16-19; p. 139 ln. 12 - 23

1	6. Mr. Charanvattanakit also paid	Charanvattanakit 2017 Depo., p. 41 ln.
2	Absolute fax in cash, by Western Union,	21- p. 42 ln. 12
3	in the amounts of \$21,000 and \$2000.	
4	7. Mr. Charanvattanakit has no	Charanvattanakit 2017 Depo, p. 44 ln.
5	recollection of any of the terms of his	12 -16
6	agreement with Absolute Fax.	
7	8. Mr. Charanvattanakit admits he did	Declaration of Justin Prato, Exhibit B,
8	not discuss TCPA compliance with	Deposition of Narin Charanvattanakit
9	Absolute fax.	taken on May 19, 2014
10		("Charanvattanakit 2014 Depo", p. 33
11		ln. 13 – 16.
12	9. Mr. Charanvattanakit never asked	Charanvattanakit 2017 Depo, p. 45 ln. 2
13	Absoulte Fax how they were contacting	-18
14	people or what they were saying, he	
15	never reviewed the faxes sent, he did not	
16	ask to receive the faxes sent, and he did	
17	not keep track of the "leads" that were	
18	generated.	
19	10. Mr. Charanvattanakit relied solely	Charanvattanakit 2017 Depo, Dan p. 58
20	on trust on how he would be dealing	ln. 2 - 9
21	with Absolute Fax	
22	11. Capital Alliance Group's operations	Charanvattanakit 2017 Depo, p. 22 ln.
23	manager, Ms. Christina Duncan would	17 -20
24	received complaints from clients about	
25	faxes and nothing was done.	
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1	12. Mr. Charanvattanakit has not	Charanvattanakit 2017 Depo, p. 93 ln. 6
2	provided any terms of the agreement	- 13
3	with Absolute Fax in writing, and does	
4	not recall the specific terms	
5	13. Even when Capital Alliance, though	Charanvattanakit 2014 Depo, p. 62 ln.
6	Mr. Charanvattanakit, became aware of	14 p. 63 ln. 9; Charanvattanakit 2017
7	complaints concerning the pre-recorded	Depo, p. 138 ln. 11– p. 139 ln. 7
8	calls nothing was done to stop them.	
9	14. Capital Alliance, though its CEO,	Charanvattanakit 2017 Depo, p. 94 ln. 1
10	Mr. Charanvattanakit, admits it hired a	-12
11	company called Message	
12	Communications to make calls on its	
13	behalf.	
14	15. Mr. Charanvattanakit agrees that he	Charanvattanakit 2017 Depo, p. 76 ln. 5
15	knew Message Communications would	-10
16	make prerecorded phone calls for	
17	Capital Alliance.	
18	16. Mr. Charanvattanakit admits Capital	Charanvattanakit 2017 Depo, p. 76 ln.
19	Alliance paid Message Communications	18– p. 77 ln. 9
20	to make the calls twice.	
21	17. Capital Alliance admits that	Charanvattanakit 2017 Depo, p. 76 ln.
22	Message Communications did make the	5-7
23	calls.	
24	18. Capital Alliance Group has no	Charanvattanakit 2017 Depo, p. 74 ln.
25	written contract with Message	24 – p. 75 ln. 3.
26	Communications to evidence a TCPA	
27	compliance requirement.	
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19. Mr. Charanvattanakit admits he did not recall any such term being material or discussed.	Charanvattanakit 2017 Depo, p. 76 ln. 1 – 9; p. 74 ln. 24 – p. 75 ln. 3; p. 87 ln. 21- p. 88 ln. 3
20. Mr. Charanvattanakit only states that at the time of his deposition, long after the calls were made, that he hoped or believed Message Communications was making TCPA compliant calls	Charanvattanakit 2017 Depo, p. 45 ln. 2-5; Charanvattanakit 2014 Depo, p 32 ln 24 – p 34 ln 4
21. When Capital Alliance Group received informal complaints and later was sued for illegal marketing, Mr. Charanvattanakit testified that he, as CEO, thought the complaints were “crazy” and did not make any attempt to contact or discuss them with Message Communications.	Charanvattanakit 2017 Depo, p 45 ln 2-5 Charanvattanakit 2014 Depo, p. 32 ln. 24 – p. 34 ln. 4
22. It is Christina Duncan’s job to deal with Better Business Bureau complaints.	Charanvattanakit 2017 Depo, p. 117 ln. 22 – p 118 ln 4
23. Mr. Charanvattanakit hired Ring Central, which forwarded the calls to every toll free number on the fax ads to Capital alliance Group.	Decl. Prato ¶8-9; Expert Report of Jeffery A. Hanson; Decl. Prato, Exhibit C, Deposition of Christina Duncan (“Duncan Depo,” p. 42 ln 13-19
24. Capital Alliance benefited from these fax ads and telemarketing calls by getting leads and clients.	Charanvattanakit 2017 Depo, p 124 ln 5 – p 125 ln 18, p. 140 ln 17 -21

1	25. Mark Mendoza is the Chief	Decl. Prato, Exhibit D, Deposition of
2	Financial Officer (“CFO”) of Capital	Mark Mendoza (“Mendoza Depo,”) p. 7
3	Alliance	ln. 17-21
4	26. As CFO Mr. Mendoza is responsible	Mendoza Depo, p. 7 ln. 18- p. 8 ln. 5
5	for the corporate finances.	
6	27. Mr. Mendoza willfully looked the	Charanvattanakit 2017 Depo, p. 106 ln.
7	other way while his partner, Mr.	13 –p. 108 ln. 6
8	Charanvattanakit used cash payments	
9	though western union to pay for illegal	
10	advertising.	
11	28. There is no evidence of Mr.	Mendoza Depo, p. 17 ln. 22– p. 18 ln.
12	Mendoza questioning these payments.	23
13	29. Mr. Mendoza also took no action to	Charanvattanakit 2017 Depo, p. 106 ln.
14	discover how Mr. Charanvattanakit was	13 – p. 108 ln. 6
15	using advertising after lawsuit piled	
16	upon lawsuit	
17	30. Capital Alliance was still in the	Duncan Depo, p. 19 ln 5 – p. 20 ln. 1
18	business of using fax advertisements in	
19	August 4, 2014.	
20	31. It is clear from the face of the faxes	Declaration of Kenneth Moser (“Decl.
21	that they advertise the commercial	Moser”) ¶8, Exhibit A. Declaration of
22	availability of loan brokerage services.	Arnie Katz (“Decl. Katz”) ¶14-15,
23		Exhibit A, Declaration of David Meyer
24		(“Decl Meyer”) ¶6-7, Exhibit A
25	32. Plaintiffs Arnie Katz and Ken Moser	Decl. Moser ¶2-5 , Decl. Katz ¶8-12
26	received the fax ads using an electronic	
27	fax server.	
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1	33. None of the Plaintiffs solicited or	Decl. Moser ¶9 , Decl. Meyer ¶8 , Decl.
2	requested these fax ads in any way	Katz ¶16
3	shape of form.	
4	34. Plaintiff DCM Properties, Inc.	Decl. Meyer ¶4-5
5	received the fax ads on a traditional	
6	paper and ink fax machine.	
7	35. Mr. Ken Moser received four	Decl. Moser ¶ 24, 30, 33, 35
8	prerecorded phone calls to his cell	
9	phone.	
10	36. While the Caller ID was falsified	Decl. Moser ¶ 24, 26-27, 30, 33, 35.
11	and no company name was used in the	
12	prerecorded portion of the call to try to	
13	evade liability, Mr. Moser played along	
14	with two of the calls and after answering	
15	a few prerecorded “push 1 if you are	
16	interested” type automated queries, he	
17	was connected to a sales representative	
18	working for Capital Alliance Group.	
19	37. After the calls wherein Mr. Moser	Decl. Moser ¶ 26-29, Exhibit D
20	faked interest to determine the identity	
21	of the caller, Capital Alliance Group	
22	sent him follow up e-mails identifying	
23	themselves as the caller.	
24	38. One of those e-mails even states that	Decl. Moser ¶ 38-39, Exhibit E
25	it is from the desk of Defendant Mark	
26	Mendoza.	
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39. Mr. Moser testifies that the phone number on which he received the calls, (858) 627-4190, is a cellular telephone assigned to him by his cellular telephone carrier	Decl. Moser ¶ 25
40. While such services usually use electronic files, there is no doubt they have the capacity to print to paper, and were even used to do so in this case.	[Decl. Moser ¶5-6, Decl. Katz ¶12]
41. Mr. Moser received 6 unsolicited fax advertisements	Decl. Moser ¶7-9
42. Mr. Katz received 41 unsolicited fax advertisements	Decl. Katz ¶14-16
43. DCM Properties, Inc. received 7 unsolicited fax advertisements	Decl. Meyer ¶6-8
44. Mr. Moser received 4 unsolicited prerecorded phone calls to his cell phone.	Decl. Moser ¶23-36

DATED: August 2, 2017

PRATO & REICHMAN, APC

/s/ Christopher J. Reichman
 By: Christopher J. Reichman, Esq.
Prato & Reichman, APC
 Attorneys for Plaintiffs